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C O N F I D E N T I A L SECTION 01 OF 03 ANKARA 002525

SIPDIS

DEPARTMENT FOR EUR/SE

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TAGS: [PGOV](#) [PREL](#) [PHUM](#) [TU](#) [PKK](#)

SUBJECT: OCALAN LIKELY TO GET RETRIAL

REF: A. 03 ANKARA 1578

[B](#). 02 ANKARA 8881

[C](#). 02 ANKARA 6116

Classified by Polcouns John Kunstadter; reasons 1.4 b and d.

[1](#). (U) Summary: The European Court of Human Rights (ECHR) is expected to rule on May 12 that Abdullah Ocalan, jailed leader of the Kurdistan Workers Party (PKK), did not receive a fair trial when he was convicted in 1999. Contacts say such a verdict would likely lead to a retrial in a Turkish court. Re-convicting Ocalan should be simple from a technical standpoint, but the court would have to address ECHR due process concerns to avoid international criticism. A retrial of the terrorist leader could spark social unrest. End Summary.

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Ocalan Retrial Expected  
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[2](#). (U) The ECHR has announced that it will issue its ruling in the Ocalan case on May 12. Our contacts say they expect the court to rule that Ocalan did not receive a fair trial following his 1999 arrest. They say the ruling will likely lead to a retrial for the terrorist leader.

[3](#). (U) The ECHR initially ruled against Turkey in the case in March 2003 (reftel A), when the court determined that elements of Ocalan's detention and trial violated the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms. The court cited the following violations:

-- The three-judge State Security Court that tried Ocalan initially included a military judge;

-- the GOT improperly denied Ocalan access to an attorney for seven days while he was held in police custody, during which time he made several incriminating statements;

-- Turkish authorities improperly held Ocalan for seven days before bringing him before a judge;

-- security forces attended meetings between Ocalan and his attorneys;

-- following the first two attorney visits, Ocalan was permitted only two hours per week for consultations with attorneys; and,

-- prison authorities prevented attorneys from providing Ocalan with certain legal documents.

[4](#). (C) The GOT appealed the 2003 ruling to the ECHR Grand Chamber, whose final decision is now expected. Koksal Toptan, chairman of the parliamentary Justice Committee, told us the Turkish judge on the ECHR recently discussed the case with Justice Minister Cicek. Toptan averred that the judge did not indicate how the court would rule; however, Toptan said that, based on the initial verdict, he anticipates the court will again rule against Turkey. Sema Kilicer, political officer at the European Commission Representation to Turkey, said she did not have any information on the ECHR ruling. However, she said press reports anticipating a ruling against Turkey are probably correct, noting that past leaks about pending ECHR verdicts have proven accurate.

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Ocalan Excluded in Initial Retrial Reform  
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[5](#). (U) As part of the GOT's EU reform drive, Parliament in 2002 and 2003 adopted legislation allowing defendants to apply for a retrial in a Turkish court if the ECHR rules in their favor (reftels B-C). The legal amendments were carefully crafted to provide a loophole designed to prevent Ocalan from obtaining a new trial. The right to retrial was applied to cases in which the ECHR had ruled prior to the passage of the Turkish legislation, as well as to cases brought to the ECHR following passage. It did not, however, apply to cases under ECHR review at the time of passage. Ocalan's case, as well as those of approximately 300 other

convicts, fell into this third category.

16. (C) Nevertheless, a number of Turkish attorneys have argued that Ocalan is entitled to apply for a retrial thanks to a 2004 constitutional amendment under which Turkey's international agreements take precedence over national law. Toptan maintains that the constitutional amendment would enable Turkey to retry Ocalan without the need to make further legal adjustments. He rejected the arguments of Constitutional Court Vice Chairman Hasim Kilic, a conservative (Islamist) who has said publicly that Turkey would have to amend legislation to enable Ocalan to be retried. Some attorneys have also argued that the loophole in the legislation would not withstand a legal challenge, because it arbitrarily establishes different rights to defendants based on the dates of their ECHR appeals.

17. (U) A retrial would not be automatic -- a three-judge Turkish high penal court would review an application and vote on whether to approve it. If the court rules against retrial, Ocalan's attorneys could appeal to the High Court of Appeals (Yargitay). If that fails, they could take the matter back to the ECHR. However, both Toptan and Yusuf Alatas, president of the Human Rights Association, predicted that the court will grant a retrial, to demonstrate its willingness to accept the ECHR's authority. They said timing is difficult to predict. Ocalan's attorneys will have one year from the date of the ECHR ruling to apply for retrial, although they are likely to act quickly; there is no deadline for the court to rule on the application, and the judges may decide to delay a decision for several months.

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Trial Could Raise Tensions  
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18. (C) Toptan predicted that in a retrial Ocalan would again be convicted and given the maximum sentence (Ocalan was sentenced to death in the original trial, but the sentence was converted to life imprisonment when Turkey abolished the death penalty). But Toptan, echoing the comments of other contacts with deep connections to the State, acknowledged that the trial could become a rallying point for nationalists and Kurdish separatists looking to stir up trouble. Moreover, he worried that the EU will make "unreasonable demands" on Turkey regarding the conduct of the trial. He accused the EU of applying a "double standard" to Turkey, asserting that while EU officials harshly criticized Turkey for the violent crackdown on demonstrators by Istanbul police in March, they have remained silent following similar incidents in France. He averred that Turkey's critics in the EU could use the trial to smear the GOT.

19. (C) Alatas, attorney for left-wing Kurdish activist and PKK sympathizer Leyla Zana and her co-defendants, also said a court should have no trouble re-convicting Ocalan. He said Ocalan openly admitted in the original trial that he was the head of the PKK, so there is no question about his guilt. Moreover, Alatas averred that the Turkish public is not inclined to overreact to the matter. When Turkey lifted the death penalty, he noted, there were only minimal protests, despite the fact that the reform spared Ocalan's life. Alatas said he doesn't expect significant unrest unless "elements of the State" decide to exploit the trial for their own interests.

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Comment  
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10. (C) From a technical, judicial standpoint, retrying Ocalan should not present a difficult challenge. There is ample evidence of Ocalan's guilt, which by all accounts he did not try to deny in the initial trial. But the Turks will have to do it right this time. Ocalan was initially tried in the (now abolished, in name at least) State Security Court system, where defendants were presumed guilty and little effort was made to evaluate evidence. The Leyla Zana retrial was the first retrial allowed pursuant to an ECHR ruling under the new reforms. It did not go well. The court repeated the pro-prosecution practices utilized in the original trial, which had led to the ECHR ruling against Turkey. Attorneys and defendants spent the proceedings making speeches bearing no apparent relation to the charges at hand. As anticipated, the court repeated its initial conviction, which an appeals court promptly overturned. The defendants are now being tried again. A court re-trying Ocalan will have to make a serious effort to address the concerns of the ECHR to avoid a similar embarrassment.

11. (C) There is also a potential for social unrest in connection with a retrial. Many close contacts tell us nationalism, on the rise in Turkey, is being stoked by various elements of the deep state, as reflected in the recent "flag burning" hysteria. Turks are beginning to become more skeptical about the EU's intentions toward

Turkey, and suspicious of its motives. The retrial is likely to take place in an already supercharged political atmosphere.

EDELMAN